

# EXHIBIT A

1 CHAIRMAN VOLZ: Good morning everyone.  
2 This is a Status Conference in Public Service  
3 Board Docket Number 7440, which is a petition  
4 of Entergy Nuclear Vermont Yankee, LLC and  
5 Entergy Nuclear Operations, Inc. for amendment  
6 of their Certificates of Public Good and other  
7 approvals required under 10 V.S.A. Sections  
8 6501 through 6504 and 30 V.S.A. Sections  
9 231(a), 248, and 254 for authority to continue  
10 after March 21, 2012, operation of the Vermont  
11 Yankee Nuclear Power Station, including  
12 storage of spent nuclear fuel.

13 My name is James Volz. I'm the Chairman  
14 of the Vermont Public Service Board. With me  
15 are Board Members David Coen to my right and  
16 John Burke to my left. I'll start by taking  
17 notices of appearance from the parties.

18 MR. WEISBURST: Good morning. My name  
19 is Sanford Weisburst. I'm here on behalf of  
20 the Entergy companies. I should mention that  
21 I have a motion for pro hac vice admission  
22 pending.

23 CHAIRMAN VOLZ: Right. We're going to  
24 take up motions after we do notices of  
25 appearance.

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<p style="text-align: right;">Page 2</p> <p>1 MR. HEMLEY: Robert Hemley, Gravel and 2 Shea, for the Entergy companies. 3 MR. MARSHALL: John Marshall, Downs 4 Rachlin Martin PLLC, for Entergy Nuclear 5 Vermont Yankee, LLC and Entergy Nuclear 6 Operations, Inc. 7 With us today is Marcus Brown sitting 8 behind me, Senior Vice President and General 9 Counsel with Entergy, Tim Go (phonetic), 10 Associate General Counsel of Entergy Services, 11 Inc., and Mike Toomey who is a Vice President 12 External Affairs. 13 MR. BELING: John Beling for the 14 Department of Public Service. With me this 15 morning is Deputy Commissioner Sarah Hofmann. 16 MS. DILLON: Judith Dillon on behalf of 17 the Vermont Agency of Natural Resources. 18 MS. ANDERSON: Carolyn Anderson on 19 behalf of CVPS. 20 MS. LEVINE: Sandra Levine with 21 Conservation Law Foundation, and with me today 22 is Meredith Crafton what is a law extent at 23 VLS. 24 MR. MARGOLIS: Jared Marjolis on behalf 25 of the New England Coalition, and with me is</p>	<p style="text-align: right;">Page 4</p> <p>1 CHAIRMAN VOLZ: Thank you. We have some 2 pending motions to appear pro hac vice; one 3 for Robert C. Juman, another for Kathleen M. 4 Sullivan, and another for Sanford Weisburst. 5 They were filed on January 31st. No one filed 6 a response to it to reject it so we're going 7 to grant those motions at this time. 8 Next I would like to talk about what the 9 purpose of the status conference is. 10 Primarily it's to determine the future course 11 of this proceeding. We've read all of your 12 submissions responding to our February 22nd 13 memorandum and they have been helpful to us as 14 we think about how this docket should proceed. 15 In this status conference we would like 16 to focus in particular on the scope of review 17 now that the Federal Court has issued its 18 decision and the extent to which we rely on 19 the existing record. We would also like to 20 address the issue the operation of Vermont 21 Yankee past March 21, 2012, and we have a few 22 questions on Entergy's March 7th submission. 23 Also, we provided an opportunity for an 24 additional round of written submissions in 25 which those parties who wish to may respond to</p>
<p style="text-align: right;">Page 3</p> <p>1 NEC's Technical Advisor Raymond Shadis, as 2 well as Clay Turnbull and Jake Stewart. 3 MR. FIDEL: Jamie Fidel, Vermont Natural 4 Resources Council and Connecticut River 5 Watershed Council. With me is Paul Brierre 6 who has filed a notice of appearance on behalf 7 of both organizations. 8 MR. CAMPANY: Chris Campany, Director, 9 Windham Regional Commission, and with me is 10 Tom Buchanan from the Commission. 11 MR. ZAMORE: Peter Zamore, Sheehey 12 Furlong &amp; Behm, for Green Mountain Power 13 Corporation, with me is Charlotte Ancel. 14 MR. DUMONT: James Dumont for Vermont 15 Public Interest Research Group. With me is 16 Ben Walsh. 17 MR. DRISCOLL: William Driscoll with 18 Associated Industries of Vermont. 19 CHAIRMAN VOLZ: Is that all the parties? 20 Are there any other parties? 21 MR. PRATT: One more, Mr. Chairman. 22 Randy Pratt, Vermont Electric Cooperative. 23 MS. EARLE: And Caroline Earle for the 24 International Brotherhood of Electrical 25 Workers.</p>	<p style="text-align: right;">Page 5</p> <p>1 the other parties' previous filings and to the 2 matters discussed today. The deadline for 3 these additional comments is Friday, March 4 16th. If parties would like to respond to 5 other parties' March 16th filings, we are not 6 requiring them, but if you feel the need to 7 that, you should do that by March 20th. 8 I would like to remind everybody that 9 this is a status conference. It's not -- and 10 we only have this room until noon so I would 11 urge everyone to be efficient in their 12 responses. 13 We do have a series of questions we 14 would like to ask the parties. The first 15 question is for all the parties. In its 16 petition in this docket Entergy Vermont Yankee 17 stated that its petition, now I'm quoting from 18 the petition, requires this Board's approval 19 under subsection A of Section 231, as well as 20 this Board's approval and the approval of the 21 General Assembly under paragraph 2 of 22 subsection 248(b) of Title 30 Vermont Statutes 23 Annotated in accordance with the criteria 24 established by subsection B of Section 248, 25 and subsection B and C of section 254 of Title</p>

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<p style="text-align: right;">Page 6</p> <p>1 30, and a finding under subsection A of  2 Section 248 that issuance of a CPG for  3 continued operation of the Vermont Yankee  4 station will be in the public good of the  5 state.  6 Entergy's VY petition further stated, as  7 continued operation of VY station will require  8 storage of spent nuclear fuel generated after  9 March 21, 2012 at the VY station, such  10 petition also requires the General Assembly's  11 approval under Chapter 157 Title 10 Vermont  12 Statutes Annotated. In light -- now given  13 what they have said there was the scope as we  14 started this proceeding, and in light of the  15 Federal Court decision, what approvals does  16 Entergy VY now need from the Public Service  17 Board. That's the question I would like you  18 to answer and I would like to hear from all  19 the parties.  20 I would like to start with Entergy. In  21 particular, what approvals do you think you  22 need at this time that you're requesting us to  23 grant?  24 MR. MARSHALL: As a result of Judge  25 Murtha's decision and the law as it now</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. HEMLEY: Chairman Volz, the issue is  2 that both the Department of Public Service and  3 the Attorney General have submitted to the  4 Board documents indicating that they are in  5 agreement that Entergy may store additional  6 spent nuclear fuel at the site without  7 obtaining further approval so long as this  8 proceeding is pending.  9 We need clarification with regard to the  10 position of the Board before we have the full  11 assurance that we need, and this relates to  12 the pending applications that we have made to  13 the District Court for the District of  14 Vermont.  15 So while the Attorney General and the  16 Department of Public Service have made  17 assertions as to the positions that they take  18 with regard to the permitted continued  19 operation during the pendency of the  20 proceeding, we do not yet have the necessary  21 assurance from the Board which we would need  22 before we were satisfied that we don't have to  23 proceed as we have planned to proceed before  24 the District Court.  25 CHAIRMAN VOLZ: I guess I'm trying to</p>
<p style="text-align: right;">Page 7</p> <p>1 applies, we believe that Entergy Vermont  2 Yankee needs approval under Section 231 of  3 Title 30 Vermont Statutes Annotated. That  4 said, the standard which is public good is  5 broad and can take into consideration many  6 factors that might have been considered under  7 other statutes such as Section 248, but  8 fundamentally we believe that the approval  9 that's required here is the amendment or the  10 issuance of a new Certificate of Public Good  11 under Section 231.  12 CHAIRMAN VOLZ: Is Entergy VY requesting  13 Board approval for storage of additional  14 amounts of spent fuel from the operation after  15 March 21, 2012?  16 MR. MARSHALL: At this point I would  17 like to ask Mr. Hemley to address this  18 question because we have an issue concerning  19 the applicability of subdivision (C)(2) in  20 Chapter 157 that we would ask the Board to  21 address.  22 CHAIRMAN VOLZ: The subject of section  23 --  24 MR. MARSHALL: 6522.  25 CHAIRMAN VOLZ: Right. Thank you.</p>	<p style="text-align: right;">Page 9</p> <p>1 see what is the statutory authority for you to  2 continue to operate past March 21st and create  3 fuel after that date that would need to be  4 stored?  5 MR. HEMLEY: Well I'll offer a short  6 response and I'm going -- not to lateral this  7 thing around the table too far. I'll have Mr.  8 Weisburst amplify it if I have left something  9 out, but my sense is under 814 there is a  10 continued operation so long as we have in  11 application and there is a pending our  12 application for a Certificate of Public Good,  13 which we have of course applied for back in  14 2008, and that's the application is pending  15 here in this docket.  16 MR. WEISBURST: That's correct. The  17 basis is 3 Vermont Statutes Annotated 814(b).  18 One might call it a timely renewal. If one  19 has applied for a renewed CPG or license and  20 the renewal application remains pending, the  21 existing license continues in effect until the  22 application for the renewed license is  23 resolved.  24 CHAIRMAN VOLZ: So is your answer then  25 you're not asking us for approval at this time</p>

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<p style="text-align: right;">Page 10</p> <p>1 to store fuel that is created after March 21st  2 -- created by operation after March 21st,  3 2012?  4 MR. HEMLEY: No. I don't think that's  5 correct. We are asking for that approval as  6 well.  7 The question that Mr. Weisburst has  8 addressed, and that I have addressed as well,  9 relates to the immediacy of the need for the  10 assurance, but we are going to ask the Board  11 to give us a CPG that does in fact entitle us  12 to store spent nuclear fuel that is generated  13 after March 21st, 2012.  14 CHAIRMAN VOLZ: Okay. So if you're  15 going to be asking us for that approval, what  16 authority do we have to grant that approval?  17 MR. WEISBURST: The authority to grant  18 that approval would be under Section 231 and  19 let me clarify.  20 CHAIRMAN VOLZ: What about Chapter 157  21 of Title 10?  22 MR. WEISBURST: If I could, just to get  23 231 clarified for a second, 231 speaks to  24 operation and sets forth the general good  25 standard. That clearly would be applicable in</p>	<p style="text-align: right;">Page 12</p> <p>1 will be no refueling for a period of several  2 months that it's akin to the no blood no foul  3 routine calling a foul in basketball, that it  4 doesn't matter for the time being because  5 there is no additional fuel being generated?  6 Was that your position?  7 MR. WEISBURST: That was our alternative  8 position. Our primary position is that we are  9 protected under 3 V.S.A. 814(b) with regard to  10 storage of spent fuel.  11 Our alternative position was that in the  12 event that 6522(C)(2) did apply and restricted  13 us, that we would still be in compliance with  14 that up until the next refueling which is  15 scheduled for March 2013. I would note that  16 the Department of Public Service in it's  17 filing on Wednesday, and the Attorney General  18 in it's filing in the District Court  19 yesterday, which was supplied to the Board,  20 have agreed with our primary interpretation  21 which is that 814(b) provides us the  22 assurance.  23 The Board has not yet spoken. We don't  24 want to presume the Board's answer to that  25 question. We're trying to explain our</p>
<p style="text-align: right;">Page 11</p> <p>1 our view to the operations issue.  2 As to storage, the way Chapter 157 was  3 set up was the Board was fully in charge of  4 that process of stored spent fuel up until  5 March 21st, 2012. The Legislature created a  6 role for itself going forward from that date.  7 Judge Murtha has now struck down that latter  8 aspect.  9 There's actually a question in our view  10 as to, not the Board's authority over  11 continued operation, but the Board's authority  12 over continued storage of spent fuel derived  13 from that operation. It's an open question  14 which we would like the opportunity to brief  15 further, but in the event the Board were to  16 determine that we needed a CPG both for  17 operation and for storage, we believe we could  18 satisfy the Board's concerns, and we believe  19 that inquiry would be governed under 231's  20 general good standard.  21 BOARD MEMBER BURKE: Is it fair to say  22 that from what I read in your position paper  23 that during the pendency, at least the  24 immediate pendency, of our proceedings here  25 that you're satisfied that in fact since there</p>	<p style="text-align: right;">Page 13</p> <p>1 position to the Board on 814.  2 CHAIRMAN VOLZ: Entergy's spent fuel  3 CPG, Docket 7082, doesn't have an expiration  4 date. It has some limitations, but there's no  5 date on which that actual CPG expires.  6 Instead, the limitation is on the amount of  7 fuel that can be stored there, and how does  8 Section 814 expand that amount or allow for  9 the expansion of that amount?  10 MR. WEISBURST: The way it does that is  11 the general principle 814(b) is that if you've  12 got a certificate or a license that's going to  13 reach its limit, whether it's an amount limit  14 or a date limit, and you've timely applied to  15 enlarge that, that while the application is  16 pending you can continue to operate.  17 CHAIRMAN VOLZ: Right. My question to  18 you is if you're filing an application to us  19 for us to authorize you to store more fuel in  20 the future there after operation beyond March  21 21st, 2012, assuming we approved your 231  22 certificate, what authority do we have to do  23 that under Chapter 157?  24 If you read 157, there's a section in  25 there that specifically says we only have</p>

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<p style="text-align: right;">Page 14</p> <p>1 authority to approve a facility to store up to 2 March 21st for fuel generated through 3 operation through March 21st, 2012. So where 4 do we get the authority to approve an 5 application that goes beyond that? 6 MR. WEISBURST: 6522(C)(2) in the 7 company's view was a condition -- there were 8 several conditions on the Board's approval of 9 the facility to store spent fuel. The Board 10 granted that certificate and imposed these 11 conditions. The conditions included the fuel 12 had to be only fuel derived from Vermont 13 Yankee, not some other place, this total 14 amount condition and another one. 15 When the Legislature also created a 16 second phase of this where the Legislature, 17 the General Assembly, would control storage of 18 spent fuel derived from post March 21st, 2012 19 operations. In the company's view that was 20 the design of this scheme. 21 The Board was in charge up until March 22 21st, 2012. The Legislature would be in 23 charge of that decision for the amounts 24 derived after that date. We now have a 25 situation in which there's arguably a void of</p>	<p style="text-align: right;">Page 16</p> <p>1 we're asking these questions. 2 Isn't it constrained such that it can't 3 approve storage of spent fuel from post March 4 21st, 2012 operation. Note, Section 5 6522(C)(2) provides, and I'm quoting, any 6 Certificate of Public Good issued by the Board 7 shall limit the cumulative total amount of 8 spent fuel stored at Vermont Yankee to the 9 amount derived in the operation of the 10 facility up to but not beyond March 21st, 11 2012, the end of the current operating 12 license. That language was not struck by the 13 Court. That language -- and the CPG we issued 14 in Docket 7082 had that limitation in it, and 15 I'm asking what authority do we have to 16 approve storage of nuclear waste after that 17 date? 18 MR. WEISBURST: First answer is it's 19 important to remember that this CPG that you 20 just referred to, Chairman Volz, was a CPG for 21 construction of a facility. It was a 22 condition that was attached to that CPG. The 23 Board granted the approval. The facility was 24 built. 25 6522(C)(2) imposed this condition. It</p>
<p style="text-align: right;">Page 15</p> <p>1 regulation as to the storage question because 2 the Legislature's role is now out of the 3 statute. The Board's role -- 4 CHAIRMAN VOLZ: In one respect, that one 5 sentence was struck from 6522(C)(4). 6 MR. WEISBURST: That's right. 7 CHAIRMAN VOLZ: But there are other 8 parts of Chapter 157 which gives the 9 Legislature authority over the storage of all 10 kinds of different kinds of waste that hasn't 11 been struck. 12 MR. WEISBURST: Our view is that (C)(2) 13 applied only to storage and only to the 14 Board's authority over such storage up until 15 March 21st, 2012, and that the Board to the 16 extent it retains authority over storage it 17 would not be under 6522(C)(2). It potentially 18 could be under 231 which is a general 19 requirement, and we certainly don't deny the 20 Board's authority over operations which is 21 very much an issue in this petition as well. 22 CHAIRMAN VOLZ: Isn't the Board's 23 authority on 10 V.S.A. Section 6522 24 constrained? We haven't designed the issue 25 yet. We're trying to understand. That's why</p>	<p style="text-align: right;">Page 17</p> <p>1 gave the Board authority over it and the Board 2 executed that authority. It put the 3 Legislature in charge in (C)(4) over the 4 situation of stored fuel derived from post 5 March 2012 operations. The Legislature was 6 going to be able, if it chose, to allow 7 storage of fuel derived from operations past 8 that date. That was the scheme. 9 That aspect of the scheme has now been 10 invalidated. It's preempted. So the 11 Legislature did not contemplate a situation 12 where the Board would continue to be involved 13 at that stage post March 2012. Instead the 14 Legislature was taking control of that. We 15 sort of have an incomplete statute that's left 16 in terms of the Board's authority. The Board, 17 as I said, certainly has authority over 18 operations. The Board arguably has authority 19 indeed over storage, but the Board is not 20 constrained by (C)(2) because the Legislature 21 contemplated that there could be storage after 22 March 2012. It contemplated that it would be 23 in control of that decision and it's now been 24 taken out of the picture by the District 25 Court's decision.</p>



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<p style="text-align: right;">Page 18</p> <p>1 CHAIRMAN VOLZ: Well I mean I don't  2 think we're going to get to the bottom of this  3 today. I would just note that the Board has  4 only such authority as the Legislature gives  5 it and we can't add to that authority by fiat  6 of our own. So this is probably something  7 we're going to have to brief and decide at a  8 later date. I think we've been around it  9 enough now that we understand your position.  10 Next I would like -- pretty much want to  11 ask the Department's position on all of this.  12 In particular, the question I asked -- well I  13 would like to focus on the Department's March  14 7th filing. At the bottom of page 5 the  15 Department states that quote, Entergy requires  16 a Certificate of Public Good for continued  17 operation and storage, and the Board should  18 set a schedule for consideration of whether to  19 grant the petition.  20 Can the Board issue a CPG for storage of  21 spent fuel generated after March 21st, 2012?  22 Again, to you folks the same question I asked  23 Entergy. Isn't the Board's authority under 10  24 V.S.A. Section 6522 constrained by the  25 language of the statute?</p>	<p style="text-align: right;">Page 20</p> <p>1 long as this plant keeps operating. That's  2 our position on that.  3 CHAIRMAN VOLZ: As far as what approvals  4 they need, they need Section 231. Anything  5 else?  6 MR. BELING: Well 231 I believe will  7 incorporate a number of 248 criteria, but in  8 essence this is a 231 proceeding. It's very  9 broad authority under 231, and basically the  10 only thing that's really been removed by the  11 District Court are these legislative approvals  12 and this below market aspect, which we're not  13 really sure what that means, but it doesn't  14 really matter because there's no market today;  15 above, below, or at market. So we definitely  16 think you can consider the fact there's a  17 complete absence of any PPAs in this  18 proceeding. You're not constrained by the  19 District Court order.  20 CHAIRMAN VOLZ: Other than we couldn't  21 condition approval of continued operation on  22 coming up with a PPA?  23 MR. BELING: Below market. Whatever  24 that means.  25 CHAIRMAN VOLZ: Right. Ms. Dillon.</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. BELING: The language of the statute  2 does appear to constrain the Board. I would  3 agree with that. I think as a practical  4 matter as we sit here today, based on  5 Entergy's representations, the issue is not  6 going to come up for a bit. We would ask the  7 opportunity to submit in the next round of  8 briefing and think on this a little further,  9 but it does appear, I agree with you, if you  10 take the statute, excise the one sentence that  11 the District Court excised, there does appear  12 to be a constraint on the Board's authority to  13 grant storage past March 2012.  14 CHAIRMAN VOLZ: Thank you. Any other  15 comments on this?  16 MR. BELING: I would just -- on the  17 license issue on 814 we do agree that it  18 serves to keep the existing license going by  19 operation of law, but that also means there's  20 obligations under that license that continue  21 under operation of law, and we think it's very  22 important that Entergy can't just pick and  23 choose the provisions that they want to comply  24 with. There's a lot of obligations under the  25 existing license that need to go forward as</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. DILLON: We concur with the  2 Department.  3 CHAIRMAN VOLZ: Ms. Anderson.  4 MS. ANDERSON: Yes. We want an  5 opportunity to brief the first issue that the  6 Board raised as well.  7 CHAIRMAN VOLZ: What I'm asking parties  8 now is more about the scope of your view in  9 particular what they need.  10 MS. ANDERSON: We agree it's under 231  11 and the 248 factors can come in there.  12 CHAIRMAN VOLZ: Ms. Levine.  13 MS. LEVINE: We agree that the Board  14 does not have authority to approve storage of  15 spent fuel generated after March 21st, 2012,  16 and that the approval would be under 231 which  17 does incorporate the 248 criteria.  18 We do believe that the claims regarding  19 the scope of Section 814 are too broad. It  20 certainly covers the Board's Certificate of  21 Public Good, but it does not cover the  22 decisions of the Board that would -- that  23 specifically rely on commitments made by  24 Entergy regarding the storage of fuel in other  25 matters, that that doesn't extend those</p>

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<p style="text-align: right;">Page 22</p> <p>1 commitments beyond the date of the license.  2 CHAIRMAN VOLZ: We have more questions  3 about that, but we'll be getting to them. Mr.  4 Margolis.  5 MR. MARGOLIS: NEC agrees the decision  6 on 231, which can incorporate the 248  7 criteria, and we also agree -- well actually  8 disagree with Entergy's statement that Section  9 6522 is an incomplete statute. By virtue of  10 their continuing to operate they would need to  11 construct new facilities for the storage of  12 spent nuclear fuel and 6522 applies to that,  13 but as you pointed out there's limitation in  14 what this Board can do and what it cannot, and  15 so the Board cannot actually provide that  16 permission.  17 CHAIRMAN VOLZ: We just asked the  18 question. We didn't rule on that yet. You  19 were characterizing it as though we ruled on  20 it.  21 MR. MARGOLIS: No. I was commenting on  22 the language you pointed out.  23 CHAIRMAN VOLZ: Right. Mr. Fidel.  24 MR. FIDEL: I'm going to let Paul  25 Brierre address that.</p>	<p style="text-align: right;">Page 24</p> <p>1 agrees that the Section 231 CPG is required  2 and that it can incorporate the appropriate  3 criteria of Section 248.  4 CHAIRMAN VOLZ: Mr. Dumont.  5 MR. DUMONT: VPIRG agrees with what  6 Green Mountain Power just said in this one  7 instance. I would go beyond what colleagues  8 from VNRC, CLF, and NEC have said, and I think  9 the record should reflect that today for the  10 first time we've just heard a verbal motion  11 for an interlocutory declaratory judgment.  12 That's what the Entergy's relief is they are  13 seeking without any basis in the rules. They  14 haven't cited a rule or statute that gives the  15 Board an interim temporary declaratory  16 judgment which seems to be what they want.  17 CHAIRMAN VOLZ: Mr. Driscoll.  18 MR. DRISCOLL: AIV agrees with Entergy.  19 CHAIRMAN VOLZ: Thank you. Yes. Miss  20 Earle.  21 MS. EARLE: IBEW supports Entergy's  22 analysis in this matter.  23 MR. PRATT: Randy Pratt, Vermont  24 Electric Cooperative. VEC has no position on  25 storage at this time unless or until it is</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. BRIERRE: Just add to what NEC was  2 saying, I think they touched on it, 814 would  3 allow -- might allow operation, but with  4 respect to storage they are going to be  5 constructing new casks and a new facility.  6 What we were saying is while 814 may  7 allow operation after March 21st, with respect  8 to the spent nuclear fuel facilities we don't  9 view that as continuing permission for storing  10 nuclear fuel. What we would view basically  11 they are applying for a new permit for new  12 facilities for additional fuel and there's no  13 continuation. There's nothing to continue.  14 CHAIRMAN VOLZ: Okay. The question I  15 was asking is what is the scope -- what  16 approvals do they need from us in this  17 proceeding.  18 MR. BRIERRE: Arguably they do need  19 approval for spent nuclear -- to store nuclear  20 fuel, to construct new facilities for nuclear  21 fuel generated after March 21st.  22 CHAIRMAN VOLZ: Okay. Anything else?  23 MR. BRIERRE: No.  24 MR. CAMPANY: No comment.  25 MR. ZAMORE: Green Mountain Power also</p>	<p style="text-align: right;">Page 25</p> <p>1 factored into the economic benefit criterion  2 of 248(b)(4).  3 CHAIRMAN VOLZ: Thank you. Okay. I  4 would like to move onto our next round, series  5 of issues. We touched on this a little bit,  6 but I want to put a final point on it.  7 In light of the Federal Court decision  8 what is the scope of issues the Board can  9 consider in this proceeding? In your response  10 please be more specific than everything that's  11 not preempted. We need to understand what the  12 position is on what is or isn't preempted, and  13 we don't necessarily have to get into that  14 today in great detail because we're -- if  15 you're nervous about responding to that in any  16 specific ways right now because we're going to  17 let you file on March 16th, but we also want  18 to know what issues you believe are relevant  19 to the legal approvals that remain pending in  20 this proceeding.  21 I guess I would start with Entergy.  22 MR. MARSHALL: The Public Service Board  23 has traditionally applied various criteria in  24 interpreting Section 231. Those criteria  25 include financial soundness, technical</p>



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<p style="text-align: right;">Page 26</p> <p>1 confidence. In the recent OMYA decision  2 employment was a factor. Regulatory  3 environment. These are the type of  4 considerations that would be relevant to  5 whether the Board issues an amended or new  6 Certificate of Public Good to operate the  7 plant after March 21st, 2012. We can brief it  8 in more detail, but I think you know the law  9 as well as we do is that the Board has  10 criteria to consider and it applies them as  11 the circumstances warrant.</p> <p>12 CHAIRMAN VOLZ: I have a more specific  13 question for Entergy as well. In its March  14 7th filing at page 6 Entergy Vermont Yankee  15 says that the Board should follow the Federal  16 Court decision quote by confining itself to  17 issues of legitimate state authority. That  18 is, issues unrelated to the radiological  19 safety of Vermont Yankee's operations and  20 issues unrelated to the price at which VY  21 sells power to utilities within the state.  22 Close quote. What do you mean by unrelated?  23 Can't there be non-preemptive issues of  24 legitimate state concern that overlap with  25 safety issues?</p>	<p style="text-align: right;">Page 28</p> <p>1 possibility that you can have a consequence of  2 safety. So to give you an example if there  3 were a safety incident in the plant that  4 caused the plant to shut down thereby  5 hindering reliability of the plant,  6 reliability would have been a consequence of  7 safety and would not be something that could  8 be addressed.</p> <p>9 We, by the way, also reserve our right  10 to argue that reliability is not within the  11 proper purview of the Board, but this sort of  12 inevitable consequence and the specific case  13 that Judge Murtha discussed was the Bango  14 media case from the Second Circuit in this  15 respect of consequences -- one cannot look at  16 consequences of a preempted area and focus on  17 the consequence as a way of getting around the  18 preemption.</p> <p>19 So that's something that the Board  20 should also take into account going forward,  21 and we can specify this further in our  22 briefing.</p> <p>23 CHAIRMAN VOLZ: Okay.</p> <p>24 BOARD MEMBER BURKE: I think what the  25 Chairman was getting at and what I would like</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. MARSHALL: I would ask Mr. Weisburst  2 to address that because he was counsel in the  3 federal litigation.</p> <p>4 CHAIRMAN VOLZ: Okay.</p> <p>5 MR. WEISBURST: Thank you for that  6 question. Again, Entergy would like the  7 opportunity to brief that at greater length in  8 the March 16th submission, but to give you a  9 preview of that, as I believe we've said  10 earlier in the submission, the safety and --  11 safety and the price of the PPA were certainly  12 the two explicit areas that Judge Murtha  13 focused on in its decision as being preempted.  14 I should say the price issue was under the  15 dormant commerce clause. It wasn't  16 technically preempted by statute, but those  17 were the two areas that were addressed.  18 However, Judge Murtha also noted in his  19 decision that to the extent there were a  20 rationale that were not plausible and  21 therefore were a pretext of safety or code  22 word for safety that's not something that can  23 be relied on. I think that's clear from Judge  24 Murtha is decision.</p> <p>25 Similarly Judge Murtha commented on the</p>	<p style="text-align: right;">Page 29</p> <p>1 to know is there are issues that in fact  2 clearly are going to have dual purposes. They  3 may well go to an issue that certainly  4 involves safety, but they have a very  5 independent reason. It may well be important  6 to us. Let's take the gorilla on the couch.  7 The buried pipes. Now Entergy can take that  8 as safety and safety and safety, but in fact  9 that came up in the discourse involving how  10 much the cost of decommissioning was going to  11 run, and in fact depending on what you have  12 that has to be removed from underground  13 sources that has something to do with  14 decommissioning. Clearly serves two purposes.</p> <p>15 So when you answer the question I would  16 like to keep in mine those things that we're  17 allowed to consider and those things we aren't  18 allowed to consider, especially when there  19 could develop be very much dual purposes to a  20 particular provision or a particular line of  21 questions.</p> <p>22 BOARD MEMBER COEN: Let me follow up  23 with something else as well. Do you want this  24 Board to interpret buzz words where the intent  25 of the parties in terms of their presenting</p>

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<p style="text-align: right;">Page 30</p> <p>1 their arguments or what's in their hearts or 2 in their minds? Is that what you're asking us 3 to do? 4 MR. WEISBURST: We're asking the Board 5 to look at the plausibility of the reasons 6 that are advanced. 7 BOARD MEMBER COEN: What does that mean? 8 MR. WEISBURST: So let me give you one 9 example. Let's say the state -- the DPS or 10 intervenors, you know, we don't know what 11 positions they will take, but let's say they 12 take the position Vermont wants to encourage 13 an energy mix that doesn't include nuclear 14 power. We think the Board should examine how 15 plausible that is given that Vermont is 16 contracted to buy nuclear power from Seabrook 17 in New Hampshire just to take one example. 18 That the proffered explanations for why 19 -- why the CPG should not be granted need to 20 be probed as opposed to accepted at face 21 value, and if they are deemed implausible, the 22 Board shouldn't rely on them. 23 CHAIRMAN VOLZ: I would like to follow 24 up on that a little bit. An issue about 25 pretext. At page 6 Entergy VY says the</p>	<p style="text-align: right;">Page 32</p> <p>1 involved in federal litigation, apparently the 2 state says is now complete, and we don't think 3 in weighing that factor should be given undue 4 weight in terms of the company's very good 5 record of compliance with numerous conditions 6 that apply to it. 7 BOARD MEMBER COEN: Mr. Marshall, so 8 should the Board consider whether it can rely 9 on the company's testimony as a factor or not? 10 MR. MARSHALL: I think the answer is 11 yes, but you again have to take into account 12 it can't be something that's put forward as 13 code for another preemptive purpose, but yes 14 you can. 15 BOARD MEMBER COEN: So we should be 16 taking a look at what's in your minds and in 17 your hearts as well when you provide 18 testimony; is that correct? 19 MR. MARSHALL: I certainly wouldn't be 20 suggesting you do that, but the fact of the 21 matter is if you're asking questions about 22 whether a discovery response was inaccurate, 23 the question goes to intent. So, yes, you do 24 have to look at that. 25 BOARD MEMBER COEN: Thank you.</p>
<p style="text-align: right;">Page 31</p> <p>1 additional evidence relating to Entergy VY is 2 incorrect testimony and cannot quote be 3 considered under the rubric of evaluating 4 whether Entergy VY is a fair bargain for 5 Vermont close quote because that would be a 6 truism or pretext for safety and below market 7 PPA rationales that the District Court found 8 preempted close quote. 9 Does Entergy VY acknowledge that in 10 assessing whether to issue a 231 CPG the Board 11 may consider a company in compliance with 12 regulatory requirements and its record in 13 providing complete and accurate information to 14 regulators? 15 MR. MARSHALL: We think the Board can 16 consider the conduct of the company. I think 17 the Board has to put it in the context of the 18 myriad conditions and requirements that have 19 been imposed upon Entergy Vermont Yankee and 20 give weight as appropriate. It happens that 21 the one particular statement in a discovery 22 response that was inaccurate as well as 23 testimony that needed to be clarified related 24 to an audit that was conducted in compliance 25 with the law that the apparently -- I'm not</p>	<p style="text-align: right;">Page 33</p> <p>1 CHAIRMAN VOLZ: Does the Department have 2 any comments on the scope of the issues the 3 Board should consider in this proceeding? 4 MR. BELING: Yes. I would like to 5 reserve the right to provide additional 6 briefing, but just as an initial observation 7 radiological health and safety were preempted 8 in 2008. Judge Murtha's decision doesn't 9 change that. All he did was he took that 10 principle, which this Board is well aware of, 11 and applied it to two statutes and found one 12 statute and one sentence from one statute were 13 preempted. 14 So that the injunction -- the 101 page 15 decision has lots of language in it, but the 16 injunction is very specific. It knocks down 17 two statutes, no below market PPA period. 18 I read Entergy's proposal for decision 19 that was submitted in 2009. I think that 20 basically the same criteria that Entergy 21 proposed that the Board consider in 2009 would 22 be considered here. There may be some 23 information. There may be some things in the 24 record that relate to this injunction, and 25 Entergy I believe has to object to that</p>

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<p style="text-align: right;">Page 34</p> <p>1 information going forward, but the same  2 criteria things haven't really changed. The  3 same principles apply to 2009, 2008 as they do  4 now except for these two statutes require  5 legislative approval and below market PPA, but  6 we'll submit some additional briefing on the  7 issue.  8 CHAIRMAN VOLZ: Okay. Thank you. Miss  9 Dillon.  10 MS. DILLON: We would concur with the  11 Department. Specifically with ANR issues we  12 would maintain that as with the original  13 relicensing, environmental and land use would  14 be appropriate for the Board review.  15 MS. ANDERSON: CVPS again goes back to  16 the Section 248 criteria including the  17 economic benefit, the revenue sharing  18 agreement, the purchased power agreement, all  19 come into play here and should be considered.  20 CHAIRMAN VOLZ: Ms. Levine.  21 MS. LEVINE: Yes. The scope of the  22 issues includes all the matters that have been  23 previously been presented to the Board in  24 Entergy's 2008 filing. That includes the 248  25 criteria will now be incorporated into Section</p>	<p style="text-align: right;">Page 36</p> <p>1 many of the issues that Ms. Levine just  2 mentioned, including economic considerations,  3 technical competence, reliability,  4 environmental, land use impacts, aesthetic  5 impacts.  6 I want to touch for a second on what  7 Entergy argued about reliability. Reliability  8 certainly has economic implications, and this  9 Board has previously stated in various other  10 dockets that they do have the jurisdiction to  11 rule on the economic implications of  12 reliability and that is certainly the case.  13 Regarding the underground pipes they  14 claim -- they seem to be claiming no evidence  15 may be admitted on that preempted issue, but  16 that totally disregards the economic and  17 environmental implications of presence of  18 underground pipes that are in process water,  19 and this Board should take into consideration  20 the non-preempted ramifications and  21 implications of that situation.  22 I also want to touch on this idea of  23 Entergy, as they put it, a fair partner for  24 Vermont, and as NEC would put it irresponsible  25 corporate entity operating in our state.</p>
<p style="text-align: right;">Page 35</p> <p>1 231 and includes the economics, environmental,  2 land use, trustworthiness, reliability, power  3 contract issues as well.  4 The courts -- the District Court's order  5 specific injunction as the Department noted  6 was very limited. It simply noted that two  7 provisions of the statutes regarding the  8 Legislature's actions are preempted. It did  9 not -- it kept intact the Public Service  10 Board's authority, and more specifically on  11 the Public Service Board's authority the  12 Public Service Board has on numerous occasions  13 considered how its authority is or is not  14 preempted in light of federal law. It's  15 considered that in virtually every case this  16 Court has considered concerning Vermont Yankee  17 and that is certainly a guide to the Board.  18 Most of those issues that have not been  19 appealed and that is good law and can guide  20 this Board going forward as to the scope of  21 preemption.  22 CHAIRMAN VOLZ: Thank you. Mr.  23 Margolis.  24 MR. MARGOLIS: NEC believes certainly  25 the Board should be taking into consideration</p>	<p style="text-align: right;">Page 37</p> <p>1 Entergy seems to be arguing this can be a  2 pretext for safety and they said the Federal  3 Court decision did not act in bad faith.  4 I want to touch on that real quick.  5 It's certainly not a pretext to safety. It  6 goes to whether Entergy's representations  7 before this Board can be relied on whether  8 Entergy will abide by the obligations imposed  9 by the Board, whether they will follow through  10 with the assurances that they make to this  11 Board. It goes to whether they will provide  12 the state nuclear engineer with accurate  13 information. Mr. Vanags testified that there  14 were no underground pipes because that's what  15 he was told by Entergy. So their  16 trustworthiness is very important in terms of  17 the information this State is getting, and if  18 you recall in 6454 this Board specifically  19 found the access and information provided to  20 the state nuclear engineer was central to the  21 Board's decision to grant the CPG.  22 It also goes to the reliability of the  23 plant and its management, certainly economic  24 implications, and I would point out to the  25 Board in questions about reliability in this</p>

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<p style="text-align: right;">Page 38</p> <p>1 docket Mr. Cullum acknowledged there was a bad  2 perception about the reliability, and when  3 Board Member Coen asked him in terms of  4 reliability should this Board also be taking a  5 look at the competence of management to deal  6 with those kinds of issues he agreed, and then  7 when Board Member Burke followed up by asking  8 whether Mr. Cullum agreed reliability was tied  9 to economic benefits specifically under the  10 revenue sharing agreement, and he agreed as  11 well. So there are clearly economic  12 implications of reliability and  13 trustworthiness that their own witness  14 testified to.</p> <p>15 I would also just like to point out that  16 the language they rely on from the District  17 Court decision stating they did not act in bad  18 faith was taken completely out of context.  19 That had to do with the Court's decision on  20 the State's argument that regarding unclear  21 hands Entergy should be barred from  22 challenging the statute at issue because they  23 had supported the legislation they were  24 challenging, and that Entergy's conduct since  25 2002 had been entirely consistent with the</p>	<p style="text-align: right;">Page 40</p> <p>1 the management of the plant is certainly an  2 issue in front of this Board that has not been  3 preempted.</p> <p>4 BOARD MEMBER BURKE: Is that a  5 relatively long response that could have just  6 been said I disagree with Mr. Marshall?</p> <p>7 MR. MARGOLIS: I'm not known for short  8 responses.</p> <p>9 CHAIRMAN VOLZ: Mr. Fidel.</p> <p>10 MR. FIDEL: We agree with the concerns  11 or issues that have been raised about the  12 relevance of impacts especially to natural  13 environment.</p> <p>14 I would like to point out as you are  15 well aware Section 248(b)(5) draws a  16 distinction between consideration of undue  17 adverse effects on water purity, natural  18 environment, and then public safety has  19 issues, and as we've raised in our brief and  20 would like to further brief for your  21 consideration we do believe that it's entirely  22 appropriate for you to consider the impacts to  23 the natural environment, the groundwater  24 contamination as has been mentioned, issues  25 regarding decommissioning, remediation around</p>
<p style="text-align: right;">Page 39</p> <p>1 understanding that the waiver from the 2002  2 MOU applied to the preemption claims.</p> <p>3 Whether Entergy is a good corporate  4 actor is not litigated in that case and you  5 know --</p> <p>6 CHAIRMAN VOLZ: If you can constrain  7 your arguments to the merits.</p> <p>8 MR. MARGOLIS: Well I know, but John  9 Marshall said you have to take into  10 consideration the fact they had been a very  11 good actor in the past and they have a very  12 good record and that is not actually the case.  13 So while I understand it may be a little  14 substantive stuff I need to address that  15 comment.</p> <p>16 This Board has previously admonished  17 Entergy for being disingenuous and less than  18 forthright with this Board, 6812 order of June  19 13, 2003. So they have a history of this. I  20 can cite to others. It's a long chronology,  21 but I won't. For now I'll keep that short and  22 put that in my brief, but the issue of whether  23 they are a good corporate citizen, whether  24 they are reliable both in terms of the  25 mechanical reliability and the reliability in</p>	<p style="text-align: right;">Page 41</p> <p>1 those issues, new evidence that we would like  2 to have you consider with regards to studies  3 as they relate to thermal discharges into the  4 Connecticut River, compliance with the  5 groundwater protection strategy, several  6 examples under natural environment that you  7 should be considering.</p> <p>8 CHAIRMAN VOLZ: Mr. Company.</p> <p>9 MR. CAMPANY: The Windham Commission  10 feels it's within the Board's scope to  11 carefully considering decommissioning  12 including cost and regional land use.</p> <p>13 CHAIRMAN VOLZ: Mr. Zamore.</p> <p>14 MR. ZAMORE: There seems to be a  15 relatively high level of consensus that the  16 Board can consider Section 248 criteria in  17 determining whether to issue a Certificate of  18 Public Good under Section 231, and that's  19 consistent with the scope of the CPG that the  20 Board issued in Docket 6545, which unlike many  21 231 CPGs was focused on the operation of the  22 plant rather than on a utility business in  23 general, and by the limited term of the CPG,  24 which is different than many other Section 231  25 CPGs, but the more detailed question here in</p>

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<p style="text-align: right;">Page 42</p> <p>1 the second round makes clear that there's 2 disagreement perhaps as to what specific 3 criteria under Section 248 are appropriately 4 applied in the Section 231 proceeding. 5 We would suggest that it may be 6 appropriate for the Board to request the 7 parties to identify which, if any, Section 248 8 criteria should not apply for whatever reason 9 in the 231 analysis. For instance, 248 does 10 refer to public health and safety under 11 (B)(5). 12 The only other point I would like to 13 make is that as we indicated in our filings 14 Green Mountain Power is very interested in 15 assuring the continued enforceability of the 16 Memorandum of Understanding that was entered 17 into in Docket 6545, including the revenue 18 sharing clause, and want to make sure that 19 there's no claim that any event since then, 20 including the District Court's decision, has 21 an impact on the enforceability of that 22 memorandum. 23 CHAIRMAN VOLZ: Thank you. Mr. Dumont. 24 MR. DUMONT: We disagree with Mr. 25 Marshall.</p>	<p style="text-align: right;">Page 44</p> <p>1 Entergy is saying we don't need to go forward 2 and certainly we're going to be considering 3 that, but if we were to go forward, we would 4 need to figure out how to treat the existing 5 record. 6 We've read the parties' filings and we 7 have some questions. First, the parties' 8 filings really didn't address the procedural 9 status of the record prior to the federal 10 litigation. Let me remind you what that 11 status was. 12 On January 27, 2010 the Board convened a 13 status conference in response to a letter from 14 the DPS stating that Entergy Vermont Yankee 15 had not provided accurate information 16 regarding underground pipes at the Vermont 17 Yankee plant. At that status conference the 18 Board did not establish the schedule for 19 resolving the issues raised by the inadequate 20 information because the Department needed time 21 to identify the additional work necessary to 22 evaluate the newly revealed underground piping 23 system. 24 On June 9, 2010, having heard nothing 25 further from the parties regarding the</p>
<p style="text-align: right;">Page 43</p> <p>1 CHAIRMAN VOLZ: Okay. Thank you. Mr. 2 Driscoll. 3 MR. DRISCOLL: AIV doesn't have anything 4 on that. 5 CHAIRMAN VOLZ: Okay. Ms. Earle. 6 MS. EARLE: Thank you. On behalf of 7 IBEW I would be very happy to share with the 8 Board that the 180 members that work at the 9 plant they would love to keep their jobs. 10 Beyond that, Mr. Chairman, we support 11 Entergy's position. 12 CHAIRMAN VOLZ: Thank you. 13 MR. PRATT: VEC's position was very well 14 articulated by Mr. Zamore except that I would 15 add that while Judge Murtha's decision does 16 bar the Board from actually conditioning a CPG 17 on a below market PPA, I don't believe that 18 bars the Board from considering a below market 19 PPA or the lack thereof in its 248(b)(4) 20 consideration. 21 CHAIRMAN VOLZ: Thank you. Next I would 22 like to turn to the record. In particular, 23 what if anything do we need to do about the 24 record in this docket? Again assuming we go 25 forward, we haven't made a decision yet,</p>	<p style="text-align: right;">Page 45</p> <p>1 statute, the Board issued a memorandum asking 2 the parties about the status of efforts to 3 develop the schedule. On June 23rd the 4 Department filed a letter stating that after 5 consulting with the other parties, now I'm 6 going to quote from the letter, it is the 7 consensus of the parties that we should not 8 create a schedule at this time. Once Entergy 9 VY has informed the Board and the parties of 10 the end date for the completion of the 11 clarification process, the parties will work 12 together to propose a new schedule and will 13 move to reopen the record. 14 The other clear direction from the 15 parties was that when we do build a schedule 16 there should be sufficient time proposed in 17 discovery, preparing responses, and writing 18 testimony. The parties will attempt to 19 incorporate these values into future schedules 20 in this docket. That's the end of the quote. 21 We have heard nothing further since -- 22 from the parties since we got that letter. So 23 the status of this docket has been that the 24 parties would propose a schedule and move to 25 reopen the record, but they haven't done that</p>



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<p style="text-align: right;">Page 46</p> <p>1 which leads to our question for all the 2 parties. We would like to understand why that 3 didn't happen and where do we go from here. 4 I would like to start with Entergy I 5 guess or I guess we can start with the 6 Department if the Department has any insight 7 on this since it was your letter. 8 MR. BELING: I just conferred with my 9 client who informs me that at the time after 10 the letter was submitted Entergy was supposed 11 to provide verification that they had taken 12 various steps. Entergy never did so which is 13 the reason from our perspective why we never 14 moved to reopen the record until recently when 15 I did following the District Court's decision. 16 CHAIRMAN VOLZ: Okay. Mr. Marshall. 17 MR. MARSHALL: The company notified all 18 parties and the Board on September 30, 2010 19 that it concluded the validation process and, 20 you know, the company's position is that the 21 Board can issue a final decision in this 22 docket based on the existing record. 23 CHAIRMAN VOLZ: Well Entergy Vermont 24 Yankee is the Petitioner and the party whose 25 CPG was expiring. Wasn't it incumbent on</p>	<p style="text-align: right;">Page 48</p> <p>1 the time you submitted the certification? 2 What happened during that year? 3 CHAIRMAN VOLZ: Between the 4 certification and the time you went to Federal 5 Court. 6 BOARD MEMBER COEN: Yes. Yes. 7 MR. MARSHALL: We were waiting for the 8 outcome of the federal litigation. 9 BOARD MEMBER COEN: You went to Federal 10 Court in September or August of 2011. Was 11 that correct? 12 MR. WEISBURST: April. 13 BOARD MEMBER COEN: April of 2011. You 14 submitted the certification in September of 15 2010. So six months or seven months. Why 16 didn't the company push at that time? 17 MR. MARSHALL: The company believed -- I 18 recall a status conference in late 2010 when 19 counsel to IBEW requested a status conference 20 in this docket and the Board just said we 21 can't decide until the Legislature has 22 approved continued operation. So the company 23 -- it made no sense to proceed when the Board 24 said it's not going to issue a decision. 25 MR. JANSON: But, Mr. Marshall, if the</p>
<p style="text-align: right;">Page 47</p> <p>1 Entergy to move this proceeding forward so we 2 wouldn't be in a position today where the 3 existing CPGs are expiring and there are all 4 issues related to that expiration? 5 MR. MARSHALL: I think the Board has to 6 take into account that the company went to 7 Federal Court to clarify the legislation that 8 applied to renewal of the CPG. It did not get 9 all the relief it sought, but it would have 10 been -- it would have made no sense to proceed 11 pending resolution of the District Court 12 litigation. 13 CHAIRMAN VOLZ: But your position is 14 that 231 -- that we still have authority to 15 issue a 231 certificate and we can do that. 16 Why didn't you ask -- you had originally 17 petitioned for a 231 certificate so why didn't 18 you seek to push that part of the proceeding 19 forward? 20 MR. MARSHALL: It would have been a 21 waste of resources for the parties and the 22 Board to proceed without having the benefit of 23 Judge Murtha's decision. 24 BOARD MEMBER COEN: Wasn't there a year 25 between the time you went to Federal Court and</p>	<p style="text-align: right;">Page 49</p> <p>1 parties had said they would develop a schedule 2 for this proceeding and move to reopen the 3 record, shouldn't they at least have done that 4 so that we could have been ready to issue a 5 decision if the Legislature authorized it? 6 MR. MARSHALL: Hindsight is wisdom and 7 maybe it would have been better if we 8 proceeded in that way, but the fact of the 9 matter was until the company had the renewal 10 of its license from the Nuclear Regulatory 11 Commission, until we had a clear signal that 12 we had from the Board that it was prepared to 13 actually issue a decision if we didn't have 14 legislative approval, we needed to go to 15 Federal Court and resolve the question of 16 whether legislative approval was required. 17 We now know that it's not and it's time 18 to proceed. 19 CHAIRMAN VOLZ: I would like to turn now 20 to the record itself. Entergy's March 7th 21 comments at page 5 and 6 discuss Entergy VY's 22 arguing to the Federal District Court 23 regarding whether the Public Service Board 24 should utilize the existing record or start 25 over. Why shouldn't the Board start over</p>



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<p style="text-align: right;">Page 50</p> <p>1 which Entergy VY represented in District Court 2 would be the safer course. 3 MR. MARSHALL: Ask Mr. Weisburst -- 4 CHAIRMAN VOLZ: Sure. 5 MR. WEISBURST: The District Court -- 6 Entergy did say that the safer course would be 7 to have a new proceeding. Entergy did not 8 affirmatively say that was required. However, 9 Entergy said there were two ways of 10 proceeding. One would be a fresh start and 11 another way would be continuing the existing 12 docket and just scrub it or disregard the 13 pre-empted parts. 14 Both of those options were laid out and 15 Entergy said the safer course would probably 16 be to start over, but we're not dictating to 17 you, Judge Murtha, which one of those to 18 adopt. Judge Murtha then -- he basically 19 didn't resolve the issue. He left it to this 20 Board's discretion. It remains in this 21 Board's discretion obviously. 22 CHAIRMAN VOLZ: Right. We're asking you 23 why we shouldn't start over -- why we 24 shouldn't exercise our discretion to start 25 over given that there could be time bombs in</p>	<p style="text-align: right;">Page 52</p> <p>1 existing docket, the way to do it would be to 2 just be clear on what parts the parties think 3 should be disregarded and what parts are still 4 on the table, and then you wouldn't have 5 Entergy or someone else coming back years 6 later and saying that something shouldn't have 7 been considered when Entergy hadn't designated 8 that upfront. 9 So the company would be prepared to do 10 that if we continue in the existing docket. 11 CHAIRMAN VOLZ: All right. Does the 12 Department have anything to add? 13 MR. BELING: I think that's a good 14 approach. I think there will need to be a 15 specific agreement by Entergy that if we go 16 through that process they will not use it as 17 the basis for appeal. Once we go through the 18 docket cleaning that's what we got and they 19 are not going to come back and say oh wait a 20 minute this thing was still in there. This is 21 safety and we're back here two years from now. 22 If they will agree with that, we're fine with 23 it. If not, start over. 24 MR. WEISBURST: If I could just add 25 briefly, to the extent the Board allows in new</p>
<p style="text-align: right;">Page 51</p> <p>1 this existing record that we're going to learn 2 after we have gone through this whole process 3 you're going to go back to Federal Court again 4 and say look at this taint that occurs. So 5 how do we deal with that? 6 MR. WEISBURST: Well I think that the 7 way to deal with it within the context of the 8 existing record would be for the parties, 9 including Entergy of course, to identify what 10 aspects of the current docket should be 11 disregarded, and we think that's maybe 12 logistically more feasible for the Board, but 13 we don't presume to dictate to the Board how 14 to proceed, and there is an element of timing 15 in all of this potentially. That if you had 16 to start all over as opposed to list out which 17 parts should be disregarded, it might take 18 longer. 19 The company would like to obtain a CPG 20 as soon as possible consistent with the 21 Board's regular processes. So Entergy 22 continues to defer to the Board's ultimate 23 judgment on this. Entergy believes that 24 either one of those two ways is a possible way 25 of proceeding. Again, if we keep with the</p>	<p style="text-align: right;">Page 53</p> <p>1 evidence there may be preempted issues that 2 come in with the new evidence that wouldn't be 3 subject to that, but we would have to see what 4 the new evidence is. 5 CHAIRMAN VOLZ: Sure. It would also be 6 subject to your objecting to it on that basis, 7 and if you fail to object to it on that basis, 8 I guess we could deal with that. Are you okay 9 with that answer? Do you have anything else? 10 MR. BELING: I agree new evidence is new 11 evidence. 12 CHAIRMAN VOLZ: Ms. Dillon. 13 MS. DILLON: We agree with the 14 Department's position. 15 MS. ANDERSON: We agree certainly some 16 evidence is stale such as the evidence we 17 learned on the agreement. 18 MS. LEVINE: CLF would generally agree 19 with that. I think it could go forward either 20 with the existing record that's clarified or 21 reopening would seem to be a cleaner way to 22 move forward. 23 CHAIRMAN VOLZ: Starting anew? 24 MS. LEVINE: Starting anew. Starting 25 anew would be clearer. Either way I think</p>

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<p style="text-align: right;">Page 54</p> <p>1 Entergy's obligation to put before the Board  2 the evidence it believes it needs in order to  3 receive a CPG and allow the other parties to  4 respond to that and not spend a lot of time --  5 and address fairly quickly what -- both what  6 are the issues and what is the evidence that  7 is being presented in light of the District  8 Court's order.  9 CHAIRMAN VOLZ: Okay. Thank you. Mr.  10 Margolis.  11 MR. MARGOLIS: NEC believes we do need  12 to start over as we briefed and we won't go  13 through that again because I put it down on  14 paper extensively.  15 I would point out that Entergy just  16 stated the parties must identify what parts of  17 the existing docket must be ignored. Seems to  18 me that would require you deny the motion for  19 a decision on the existing record at this time  20 until at least that process take place, and I  21 would also say that an agreement not to appeal  22 based on issues remaining in the record might  23 not be enforceable. It's not clear that you  24 can waive preemption through that sort of  25 agreement.</p>	<p style="text-align: right;">Page 56</p> <p>1 light of the changes to projections of the  2 energy prices, and an update on the  3 availability of the power purchase agreement.  4 CHAIRMAN VOLZ: Mr. Zamore.  5 MR. ZAMORE: We believe that it would  6 probably be more efficient not to discard the  7 consisting record, but instead require parties  8 to identify any portion of the existing record  9 that should not be relied upon, but to also  10 have further proceedings to present new  11 evidence.  12 CHAIRMAN VOLZ: Mr. Dumont.  13 MR. DUMONT: VPIRG's position is now  14 what it was in 2009 which is that any  15 agreement by Entergy is unenforceable both  16 because of their history, but also because  17 preemption is subject matter jurisdiction.  18 Subject matter jurisdiction is not waiveable.  19 So regardless of what they may say the  20 assurances are legally meaningless. So you  21 have to make that decision for yourself what's  22 preempted.  23 CHAIRMAN VOLZ: We could ask for the  24 parties to tell us what they think is  25 preempted.</p>
<p style="text-align: right;">Page 55</p> <p>1 So the -- I think the Board has to be  2 very careful with any agreement that Entergy  3 enters into saying they won't appeal that  4 decision and whether that's actually binding  5 and --  6 CHAIRMAN VOLZ: Thank you.  7 MR. FIDEL: Our position is the Board  8 needs to at a minimum reopen the record or  9 start anew. We have concerns over the tainted  10 aspects of the record. Nothing further to  11 add.  12 CHAIRMAN VOLZ: Mr. Campany.  13 MR. CAMPANY: At a minimum we would ask  14 for an updated decommissioning cost analysis,  15 updated fuel management plan, update on plans  16 to replace the aging condenser, the  17 availability of the replacement transformer,  18 update on litigation with the Department of  19 Energy for recovery of damages, update on  20 corporate reorganization, update on state  21 reliability in light of multiple leaks, an  22 update on operational issues as defined in  23 Docket 7600, updates on the value of growth of  24 the decommissioning trust fund, and update on  25 the value of the revenue share agreement in</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. DUMONT: Yes. It should be briefed,  2 but their agreement is not meaningful.  3 CHAIRMAN VOLZ: Okay. Thank you. Mr.  4 Driscoll.  5 MR. DRISCOLL: AIV doesn't have anything  6 to add to what Entergy, the Department, and  7 Green Mountain Power have said.  8 CHAIRMAN VOLZ: Ms. Earle.  9 MS. EARLE: The IBEW supports Entergy's  10 position. We don't think it's unusual to  11 update for fresh or stale evidence, or  12 out-of-date evidence in a proceeding,  13 especially a lengthy proceeding to move  14 forward.  15 CHAIRMAN VOLZ: Thank you.  16 MR. PRATT: VEC agrees with the position  17 as stated by Green Mountain Power.  18 CHAIRMAN VOLZ: Thank you. In your  19 filings on March 16th, I'm worried about the  20 record, if you could address what the -- if  21 the Board decided new evidence is needed, what  22 are the benefits and drawbacks of each of the  23 two options. That is starting fresh or going  24 through the record and trying to purge it of  25 preempted matter.</p>

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<p style="text-align: right;">Page 58</p> <p>1 Now I would like to return to the post  2 March 21st, 2012 operation. We may have  3 covered a lot of this already. Hang on for a  4 second. Concerning some further questions on  5 post March 21st, 2012 operation, could Entergy  6 VY operate the Vermont Yankee plant after  7 March 21st, 2012 without a new or renewed CPG  8 and still be in compliance with the Board's  9 order of June 13, 2002 in Docket 6545? That  10 order approved the sale of the Vermont Yankee  11 plant to Entergy Vermont Yankee under 30  12 V.S.A. Section 109, determined that a CPG  13 should be issued to Entergy VY under 30 V.S.A.  14 Section 231, and approved a Memorandum of  15 Understanding among Entergy Vermont Yankee,  16 the Department, other parties.  17 The Board's order including, among other  18 others, the following two conditions:  19 Condition 7 pursuant to 30 V.S.A. Section 231  20 a Certificate of Public Good to expire March  21 21st, 2012 shall be issued to Entergy Nuclear  22 Vermont Yankee, LLC to own the Vermont Yankee  23 Nuclear Power Station and to Entergy Nuclear  24 Operations, Inc. to operate the Vermont Yankee  25 Nuclear Power Station as described in the</p>	<p style="text-align: right;">Page 60</p> <p>1 fact of the matter is we're here trying to get  2 a CPG.  3 CHAIRMAN VOLZ: And we had the go-around  4 earlier about how 814 allows that to happen,  5 but for you to continue operating while this  6 is pending.  7 I have a more specific question. How  8 does 3 V.S.A. Section 814 extend a deadline  9 set in a condition of the sale approval?  10 Isn't it significant that the Board included  11 two separate conditions in its Docket 6545  12 order, one providing that the CPG would expire  13 on March 21st and the second prohibiting  14 operation after March 21st absent issuance of  15 a new or renewed CPG?  16 MR. MARSHALL: We continue to believe  17 that under subsection B of Section 814 Title 3  18 that we have the right to continued operation.  19 Until January 19th this proceeding was stopped  20 because there was no legislative approval for  21 continued operation, and at the status  22 conference I mentioned earlier in Docket 7600  23 where IBEW requested a status conference in  24 this docket the Board said that you're not  25 going to proceed without legislative approval,</p>
<p style="text-align: right;">Page 59</p> <p>1 foregoing findings, and then condition eight  2 said absence issuance of a new certificate of  3 public good or renewal of the Certificate of  4 Public Good issued today, Entergy Nuclear  5 Vermont Yankee, LLC, Entergy Nuclear  6 Operations, Inc. are prohibited from operating  7 Vermont Yankee Nuclear Power Station after  8 March 21st, 2012.  9 So the question for Entergy in your  10 brief in Docket 6545 at page -- initial brief  11 at page 12 you stated the following, quote, in  12 its prefiled testimony and the MOU and ENVY  13 committed they will not attempt to operate the  14 Vermont Yankee station beyond its current term  15 without obtaining extension or renewal of the  16 CPG from the Board close quote.  17 So is Entergy -- is it your view that  18 Entergy is honoring that commitment or will  19 honor that commitment?  20 MR. MARSHALL: Entergy is honoring that  21 commitment. We're here. We're trying to get  22 a CPG to under Section 231 to allow continued  23 operation as we briefed in response to the  24 Board's memorandum. We can operate under  25 Subsection B of Title 3 Section 814, but the</p>	<p style="text-align: right;">Page 61</p> <p>1 and until January 19th there was no  2 legislative approval -- there was a  3 requirement for legislative approval and no  4 legislative approval. That's why we're here  5 today.  6 CHAIRMAN VOLZ: Okay.  7 MR. HEMLEY: Mr. Chairman, if I may just  8 add, this circles back to something we were  9 discussing earlier and it relates to the  10 actions still pending in the Federal Court.  11 On page 11 of the submission that was  12 made by the Department -- excuse me, by the  13 Attorney General in response to our  14 application for Rule 60(b) relief in the  15 Federal Court, the Attorney General made the  16 following assertion, quote, the Department of  17 Public Service and the Attorney General both  18 take the position that given the Court's  19 decision, Section 814(b) applies and Entergy  20 may continue to operate under the terms of its  21 current CPGs while its CPG petition remains  22 pending at the Board, and for that reason they  23 suggest the Court need not reopen its judgment  24 to provide us with the relief that we're  25 seeking, and today we have had some level of</p>

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<p style="text-align: right;">Page 62</p> <p>1 comfort in the reaffirmation in the Department  2 of that position or the Board's questions to  3 suggest that since the Board is, and I say  4 this with respect of course, as a consequence  5 of constitutional requirements the Board  6 Members are Defendants in the federal  7 litigation. There has not been a position  8 taken by the Board or on behalf of the Board  9 with respect to the continued ability of the  10 plant to operate after March 21st. Whether it  11 was deliberate or inadvertent is not for me to  12 say, but in the several references that are  13 made by the Attorney General in his response  14 to the Rule 60(b) application he makes  15 reference to the agreement by the Public  16 Service Department and the Attorney General  17 presumably on behalf of the Governor and the  18 other defendants whom he represents in the  19 state action -- in federal action including  20 the Board Members, but we don't have that  21 explicit sense of assurance, and frankly  22 without being too presumptuous here, and not  23 to ask the Board a question that it may not be  24 prepared to answer, we need that assurance  25 from all of the parties in the federal</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. HEMLEY: Thank you.  2 CHAIRMAN VOLZ: I just want to make  3 clear to everyone. The Board is an  4 independent body. We don't work for the  5 Governor or the Attorney General, and because  6 the Department and Governor's Office are  7 parties in dockets pending before us it has  8 been determined that it would create  9 potentially an ex parte problem if there were  10 serious discussions between us and the  11 Attorney General on these matters, and the  12 Attorney General also having discussions with  13 the Department and the Governor. So for that  14 reason the Attorney General it's my  15 understanding, though you could ask him  16 yourself, that they have decided to leave us  17 out of the litigation to prevent the ex parte  18 problem, and so we're not -- we've not been  19 involved in the merits of that at all, and we  20 are independent from them and we have to do  21 our job.  22 MR. HEMLEY: I perfectly understand that  23 and I appreciate the Chairman's expressing  24 himself that way so that we can understand the  25 position, but you should -- and the Board</p>
<p style="text-align: right;">Page 63</p> <p>1 litigation, not just from some of them.  2 I may be misreading it, but we do need  3 some certainty about that so we can define our  4 approach to the federal litigation.  5 CHAIRMAN VOLZ: Well I think there's a  6 reason why -- I'm guessing there's a reason, I  7 don't know that there's a reason, why the  8 Attorney General specified the Department and  9 the Attorney General didn't specify anybody  10 else, and that's because we have had no  11 contact with the Attorney General's Office  12 about this case about the substance of the  13 case, and they represent the State and so that  14 sweeps us up into the representation, but we  15 are not in fact involved in the litigation, in  16 the strategy of the litigation, or any  17 conversations about the litigation with the  18 Attorney General's Office, and an agreement by  19 the Department and the Attorney General's  20 Department it doesn't confer jurisdiction on  21 us or authority on us that we could then grant  22 to you.  23 So, you know, we still have to sort this  24 out on our own, which is what we're planning  25 to do.</p>	<p style="text-align: right;">Page 65</p> <p>1 should understand that given that position we  2 need certainty as to the Board's position  3 between now and March 21st or we need to  4 obtain it from another source. That's the  5 company's position, and I think you probably  6 appreciate the need for us to proceed in that  7 fashion, even though we have the assurance of  8 the other parties to the federal litigation.  9 CHAIRMAN VOLZ: I don't think we've been  10 asked to do that.  11 BOARD MEMBER BURKE: That's right.  12 MR. HEMLEY: Well --  13 CHAIRMAN VOLZ: It's certainly in your  14 power to file something with us and ask us to  15 rule whether it can happen by March 21st. Now  16 that you have waited this long I have no idea.  17 BOARD MEMBER BURKE: Mr. Hemley, I got  18 to say I understand your position. I  19 understand your concern here, but this concern  20 should have existed for a substantial period  21 of time. I think it was pretty obvious during  22 the Court proceeding that we were sort of like  23 orphans here. We were named defendants, but  24 we weren't in the courtroom. We weren't  25 specifically recommended. It's the same</p>

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<p style="text-align: right;">Page 66</p> <p>1 reason when Mr. Beling makes arguments cogent  2 or not for the State of Vermont we consider  3 him just to be another litigant here in front  4 of us.  5 You have the ability to ask us to do  6 what you think we need to do. It doesn't mean  7 we have to do it, but you have the ability to  8 ask us so feel free.  9 MR. HEMLEY: I think I just did, but  10 we'll formalize that request.  11 BOARD MEMBER BURKE: I would suggest  12 that. Yeah.  13 BOARD MEMBER COEN: You're not going to  14 get an answer today.  15 MR. HEMLEY: Understood.  16 CHAIRMAN VOLZ: All right. I have a  17 question for the Department at this time. In  18 its March 7th filing at page 6 the Department  19 states that with respect to the effect of  20 previous Section 814 language in the Board's  21 orders repeating the language in the CPG would  22 not serve to alter this status close quote.  23 First the order actually contains two  24 conditions. As I read it, I read two of them.  25 Condition 7 set the expiration date of the</p>	<p style="text-align: right;">Page 68</p> <p>1 CHAIRMAN VOLZ: Sure.  2 MR. BELING: You asked whether they were  3 living up to their commitments, and we think  4 the answer is clearly no. We unfortunately do  5 think that 3 V.S.A. 814 does apply here and --  6 CHAIRMAN VOLZ: Apply to what?  7 MR. BELING: Apply to the situation and  8 you noted the two provisions in the order.  9 One is the expiration, which clearly under  10 this provisions of 814 we believe because they  11 have a pending application their existing CPG  12 goes forward. That's so it hasn't expired and  13 so our view that --  14 CHAIRMAN VOLZ: But the approval of the  15 sale was not a CPG. It's a Board order  16 approving a sale under Section 109 Title 30  17 and that condition of non-operation was placed  18 in the order approving that sale, and so I  19 don't know how section -- I would like you to  20 brief -- all the parties who are interested in  21 this to brief how Title 3 Section 814 applies  22 to that type of a condition.  23 MR. BELING: Okay. I think it's  24 probably more appropriate for briefing  25 actually. It's a complex issue.</p>
<p style="text-align: right;">Page 67</p> <p>1 CPG, while condition 8 prohibited further  2 operation without a new or renewed CPG.  3 Condition 8 is not a repetition of the CPG  4 condition. The CPG doesn't include that  5 prohibition. So doesn't your argue only apply  6 to the first of the two conditions because  7 while condition 7 may simply restate what the  8 CPG expiration date is, condition 8 is a  9 separate condition that itself prohibits  10 continued operation without a new or renewed  11 CPG and don't we have to give meaning to the  12 separate condition 8.  13 Second, the Board's order in Docket 6545  14 not only addressed issuance of a CPG to  15 Entergy Vermont Yankee, it also approved the  16 sale of the Vermont Yankee plant to Entergy.  17 So isn't condition 8 not only a requirement of  18 the CPG but also a requirement of the order  19 approving the sale of Vermont Yankee? Is it  20 the Department's position that Section 814 of  21 Title 3 applies to conditions in an order  22 approving the sale of utility assets?  23 MR. BELING: If I can go back to the  24 first question you asked Mr. Marshall, and  25 I'll get to that.</p>	<p style="text-align: right;">Page 69</p> <p>1 CHAIRMAN VOLZ: I don't need you to wing  2 it now.  3 MR. BELING: Thanks.  4 BOARD MEMBER BURKE: There should also  5 be a similar question while the Chair is  6 looking at that with regard to the provision  7 and the condition that was set out in the dry  8 cask storage docket as well, page 90 of that  9 order, condition 7 would presumably require  10 approximately the same type of analysis with  11 regard to the compliance with the Certificate  12 of Public Good and this order shall not confer  13 any expectation or entitlement to continued  14 operation of Vermont Yankee following the  15 expiration of its current operating license on  16 March 21st, 2012 before Entergy VY or its  17 successors are assigned to operate the  18 facility beyond that date. The owners must  19 first obtain a Certificate of Public Good from  20 the Board under Title 30. That's on page 9.  21 It's not in the CPG, but it's in there.  22 CHAIRMAN VOLZ: I would like to move on.  23 If Entergy Vermont Yankee's continued  24 operation of Vermont Yankee is not in  25 compliance with any applicable Board orders or</p>



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<p style="text-align: right;">Page 70</p> <p>1 Vermont laws, would that be a relevant 2 consideration in the Board's determination of 3 whether to grant Entergy VY a Section 231 CPG? 4 MR. HEMLEY: Could you repeat that? 5 CHAIRMAN VOLZ: Sure. If Entergy 6 Vermont Yankee's continued operation of 7 Vermont Yankee is not in compliance with any 8 applicable Board orders or Vermont laws, would 9 that be a relevant consideration in the 10 Board's determination of whether to grant 11 Entergy Vermont Yankee a Section 231 CPG? 12 MR. MARSHALL: Obviously compliance with 13 Board orders, the law is a consideration in 14 Section 231 proceeding. I think you have to 15 look at the totality of the circumstances, 16 however, and weigh what the company's conduct 17 has been in the time it has been operating in 18 Vermont. 19 MR. BELING: Yes. Our answer is yes. 20 MS. DILLON: Yes. 21 MS. ANDERSON: Yes. 22 MS. LEVINE: Certainly, and it was 23 raised by the Conservation Law Foundation and 24 others in Docket 7600 as well. 25 CHAIRMAN VOLZ: Thank you.</p>	<p style="text-align: right;">Page 72</p> <p>1 applicant's current license does not expire 2 until the application has been finally 3 determined by the Agency. 4 Entergy's continued operations under 5 Section 814(b) thus depends on its compliance 6 with conditions of its existing CPGs and 7 that's clear. What's missing you asked about 8 June 13, 2002 order in Docket 6545, but there 9 was a July 11, 2002 order on motions to alter 10 or amend that actually changed a bit of the 11 language that hasn't been discussed here, and 12 it added to the CPG that Entergy Nuclear 13 Vermont Yankee, LLC and Entergy Nuclear 14 Operations, Inc. are authorized to own and 15 operate Vermont Yankee beyond March 21st, 2012 16 solely for purposes of decommissioning. 17 So if the license -- if 814 -- if you 18 apply 814 the way they're asking and the 19 license continues, the license itself only 20 allows them to decommission the plant after 21 March 21st, 2012. It does not allow them to 22 operate the plant after March 21st, 2012. 23 CHAIRMAN VOLZ: Okay. People should 24 comment on that on March 16th. 25 This is for Entergy. On page 4 of the</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. MARGOLIS: Yes. 2 MR. FIDEL: Yes. 3 MR. CAMPANY: Yes. 4 MR. ZAMORE: Yes. 5 MR. DUMONT: Yes. 6 MS. EARLE: We support Entergy's 7 position. 8 CHAIRMAN VOLZ: Excuse me. We've 9 covered a lot of stuff. 10 MR. MARGOLIS: Will the parties have an 11 opportunity to respond to Entergy's comments 12 about continued operation under 814? 13 CHAIRMAN VOLZ: Sure. You can -- do you 14 have something you want to say now? 15 MR. MARGOLIS: I do. 16 CHAIRMAN VOLZ: Briefly. 17 MR. MARGOLIS: I'll be brief. I think 18 that there's a thing that's missing from this 19 discussion. I was looking through the State's 20 opposition to Entergy's Rule 60 motion from 21 Federal Court and the State made an 22 interesting argument. They said that first 23 814(b) does not say an applicant for renewed 24 license is permitted to operate while the 25 application is pending. It states the</p>	<p style="text-align: right;">Page 73</p> <p>1 March 7th filing at the bottom of the page you 2 state, I'm quoting, the invalidation of Act 3 160 legislative approval requirement the Board 4 is authorized under Section 231 to grant 5 Entergy Vermont Yankee CPG application close 6 quote, but Act 160 didn't restrict the Board's 7 ability to issue a Section 231 CPG, did it? 8 Doesn't the approval provision only apply to a 9 CPG issued under Section 248 and not a Section 10 231 -- doesn't the legislative approval 11 provision only apply to a CPG issued under 12 Section 248 and not a Section 231 CPG? 13 MR. WEISBURST: There is 14 predetermination legislative approval 15 requirement in 231 the way there was before 16 the District Court's decision. So this Board 17 can indeed proceed to consider the application 18 for the CPG and to resolve it without waiting 19 or needing legislative approval. I'm not sure 20 if that's the correct understanding. 21 CHAIRMAN VOLZ: So why did you say what 22 you said in your filing. I guess. 23 MR. WEISBURST: Can you point me to the 24 page? I apologize. 25 CHAIRMAN VOLZ: March 7th filing page 4</p>



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<p style="text-align: right;">Page 74</p> <p>1 near the bottom of the page. Begins with the  2 invalidation of Act 160 legislative approval  3 requirement.  4 MR. WEISBURST: Right. Well what this  5 is intending to say and --  6 CHAIRMAN VOLZ: In other words, we  7 weren't restricted before. We didn't need the  8 Court's order to go forward under 231. We  9 hadn't been restricted.  10 MR. WEISBURST: Well what Act 160 did is  11 it picked up the entire 231 process that  12 applies generally and it said in this specific  13 instance for this nuclear plant we're putting  14 it in the context of 248. We're going to  15 subject you to the 248 factors and we're going  16 to require you to wait for the Legislature to  17 give its approval before you can issue the  18 decision. It did all of those things. Now  19 that it's been divorced from 248 we're back in  20 231. So it wouldn't have been appropriate for  21 the Board to issue the CPG under 231 while Act  22 160 was still on the books. Now that Act 160  23 has been struck down we're back to the  24 preexisting statutory regime where 231 is the  25 operative provision.</p>	<p style="text-align: right;">Page 76</p> <p>1 struck down.  2 BOARD MEMBER BURKE: So did I understand  3 what you said there to be this was -- seemed  4 like the safer way to proceed while this was  5 all pending. If that's true, doesn't that  6 move to a question the Chairman asked earlier,  7 isn't it safer on the same basis time wise as  8 well to start with a new record so that you  9 don't have to worry about what's in there that  10 could in fact create a problem later on down  11 the road. Doesn't the same reasoning apply to  12 how we should proceed in this?  13 MR. WEISBURST: Certainly that's the  14 position Entergy took in District Court there  15 were two ways of proceeding. One would be to  16 start fresh and that would be the safer way.  17 We think it's still within the Board's  18 discretion. There may be even a consensus  19 among the parties you have heard from today  20 that's the better way to go.  21 BOARD MEMBER BURKE: I understand. I'm  22 asking you. I understand there's two ways to  23 go.  24 MR. WEISBURST: Entergy's preference  25 would be to go whichever way is the quicker</p>
<p style="text-align: right;">Page 75</p> <p>1 CHAIRMAN VOLZ: But if you believe that  2 the legislative approval was preempted,  3 wouldn't it have been wise for you to have  4 sought us to review the 231 so that we would  5 be done now with that part?  6 MR. WEISBURST: Well I'm not sure it  7 really would have been feasible to do that  8 because there would been questions. Granted  9 the Board has in the past acknowledged the  10 preempted area of radiological safety that's  11 subject to interpretation in terms of how it's  12 applied, but one area where the District Court  13 really did clear things up in a way that may  14 have been a change from the Board's prior  15 practice was the question of the below market  16 PPA, and for this Board to have proceeded with  17 a 231 process while that issue was still  18 unresolved in court would have potentially  19 been a waste of effort because it could have  20 led to a decision made on a ground that was  21 later taken off the table.  22 So that's why it probably would not have  23 made sense to go forward with the 231 process  24 until we knew the final status of Act 160.  25 Act 160 really framed everything until it was</p>	<p style="text-align: right;">Page 77</p> <p>1 way of those two, but --  2 BOARD MEMBER BURKE: Well quicker let me  3 ask you -- let me press on this a little bit.  4 Quicker. Does quicker mean ultimately getting  5 to an end that in fact isn't going to be  6 fraught with all kinds of challenges as we go  7 along, or does quicker mean the fastest way at  8 least potentially to get from A to B?  9 If you're looking at ultimately getting  10 an answer that that will not require lots of  11 visits to the courtroom, et cetera, et cetera,  12 as we go, that might be one quicker. The  13 other quicker might be what's got the fast --  14 what's got the quickest finish line that you  15 can see. Forget what potholes might exist  16 between here and the finish line. I think you  17 better think as you brief this answer, you  18 talk to us on the 16th, I think you ought to  19 keep in mind what you really mean by  20 potentially quicker. That's all.  21 CHAIRMAN VOLZ: All right. I think you  22 pretty much answered most of the questions or  23 discussed -- you haven't answered. That  24 discussed the issues we wanted to discuss this  25 morning. So I just want to remind everybody</p>

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1 where we are procedurally.

2 As I said at the outset, we would like  
3 additional comments on the matters discussed  
4 today as well as responses to other parties'  
5 March 7th filings and these will be due on  
6 March 16th, and then if someone wants to  
7 respond to any of the March 16th filings,  
8 we're not requiring that, but if you would  
9 like to please get that in by March 20th and  
10 then we will take it from there, and at some  
11 point we'll issue a decision on all these  
12 matters and let you know where we are, and, in  
13 addition, if you think there are issues we  
14 have neglected or overlooked that you would  
15 like us to address, put those in your March  
16 16th filings as well.

17 As far as we're concerned I think we're  
18 finished for today unless there's something  
19 that the parties think they need to raise.  
20 All right. Thank you very much. End.

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